

Before the
New Hampshire Real Estate Commission
Concord, New Hampshire 03301

In The Matter Of: Docket No.: 2011-030
New Hampshire Real Estate Commission v. Barry Weymouth
License No.: 051031
(Adjudicatory/Disciplinary Proceeding)

FINAL DECISION AND ORDER

Before the New Hampshire Real Estate Commission ("Commission") is an adjudicatory/disciplinary proceeding In the Matter of Barry Weymouth ("Respondent" or "Mr. Weymouth") in Docket Number 2011-030.

Background Information:

On March 3, 2011, the Commission received a complaint from a licensee (LeRette) who alleged the Respondent was posting the licensee's listings without proper identification or information. The Commission's investigator reviewed the matter and considered it settled. On September 30, 2011, the Commission received another similar complaint from a different licensee (MacKenzie). Subsequent to an investigation, on March 29, 2012, the Commission issued a Notice of Hearing for a hearing scheduled for April 17, 2012.

On Tuesday, April 17, 2012, at 9:30 a.m., the Commission commenced the adjudicatory/disciplinary hearing in the above captioned matter. Commission members present¹ were:

David C. Dunn, Commissioner, Presiding Officer
William E. Barry, Commissioner
Paul A. Lipnick, Commissioner

The prosecution was conducted by Ann Flanagan, the Commission's Investigator. Mr. Weymouth was pro se.

The following exhibits were introduced into evidence and accepted into the record:

- Investigator Flanagan: Complaint file 2011-030: pages 1-54.
- The Respondent's exhibits: none were introduced.

¹ These same Commission members also deliberated and voted on this Final Decision and Order.

Findings of Fact:

In light of the testimony and exhibits, the Commission finds the following facts:

1. The Commission issued the Notice of Hearing in this matter on March 29, 2012. The Respondent testified that he received the Notice within days of its issuance.

2. At the outset of the hearing, the Respondent asked to make a statement to the Commission in lieu of the hearing. The presiding officer explained the process of hearings before the Commission. The Respondent stated that despite receiving the notice of hearing and reading it, he thought that he could just explain the facts the way he perceived them and that the Commission would not impose discipline. When the presiding officer stated that the hearing would proceed in the normal process of an adjudicatory hearing, the Respondent questioned the Commission whether he needed a lawyer. The Respondent admitted that he had read the Notice of Hearing, including the provision which stated:

IT IS FURTHER ORDERED that if the Complainant or Respondent elect to be represented by counsel, at Complainant's or Respondent's own expense, said counsel shall file a notice of appearance at the earliest date possible;

Notice of Hearing, page 4 of 6 (emphasis in original), but the Respondent reiterated that he thought that he should be able to just talk it out with the Commission informally. As the presiding officer asked to commence the hearing, the Respondent moved to postpone the hearing to obtain legal counsel. The motion was denied as it was perceived to be a delay tactic and without good cause. See Admin. Rule Rea 205.02 (the Commission's administrative rule on requests for continuances).

LICENSURE FACTS:

3. The Respondent has held a license as a real estate salesperson from the Commission since September 15, 1998 continuously until he received his real estate broker license on February 8, 2005.

4. The Respondent has held an individual broker license in his own name (Barry M. Weymouth) from the Commission since February 8, 2005, and has held this license at all relevant times to this proceeding.

5. The Respondent has registered the trade name "CRG" with the Commission. This registration is attendant/attached to the individual broker license in his own name. This registration allowed the Respondent to act as a broker under the name CRG in the same manner he would be allowed to act under the broker license issued under his own name. This registration has been in active status at all relevant times to this proceeding.

6. The Respondent has held a firm broker license in under the name "Coleman Realty Group, LLC." This broker license lapsed on February 14, 2009. This license has been invalid at all relevant times to this proceeding.

7. Practicing as broker, using the name Coleman Realty Group, without a valid license is a violation of the Commission's practice act.

CRAIGSLIST FACTS:

8. The Multiple Listing Service ("MLS") is a databank that holds information on homes listed for sale by a real estate agent. The MLS also holds information about properties available for rent.

9. The Northern New England Real Estate Network ("NNEREN") is the entity through which information can be uploaded to the MLS. NNEREN requires membership and a fee. Only members who have the owner's written consent may upload properties for rent to NNEREN and the MLS. See RSA 331-A:26; Rea 404.04(a).

10. The Internet Data Exchange ("IDX") is a system that creates a link that one may put on their website, page, or in an email to allow another to click that link and view information on the MLS. When information is uploaded to the MLS, the MLS will provide an MLS number and an IDX Link.

11. On or about March 7, 2011, the Commission's Investigator ("Investigator Flanagan") received an email complaint from licensee Sandy LeRette. CF at 45².

² CF refers to the Investigator's Exhibit, specifically Complaint File 2011-030; 'at 45' indicates that it is page 45.

12. LeRette had a client who was a homeowner. LeRette had an agreement and the authority from the homeowner to list the homeowner's property for rent. LeRette listed a property on the MLS.

13. The Respondent saw the listing on the MLS. The Respondent posted some, but not all, of this rental property information on Craigslist.³ The Respondent did not identify himself in any manner on this website. The Respondent did not identify any of his broker names. The Respondent did not provide an IDX Link or the MLS number. The Respondent did not have the homeowners agreement or authority.

14. When LeRette's client saw the Respondent's posting and recognized it as his own property, he emailed the poster – and learned that it was the Respondent. The client notified LeRette, who in turn, notified the Commission's Investigator on or about March 7, 2012.

15. At the hearing, the Respondent admitted that:

- a. He would see a listing on the MLS.
- b. He would create a Craigslist posting.
- c. He would copy some of the information from the MLS.
- d. He would not copy all the information.
- e. He did not have a method of verifying that he was uploading accurate information.
(Thereby creating an unauthorized legal risk to the property owner – if the viewer of the posting relied on misinformation when entering into the rental transaction).
- f. He did not include an IDX link. (See RSA 331-A:16, IV(c)).
- g. He did not have the owner's consent to the posting.
- h. He would not indicate that he was not the owner; he would not indicate that he was not affiliated with the owner. (See REA 404.05(b)).
- i. He did not have the owner's consent to the posting. (See RSA 331-A:26, XXXI).
- j. He would not include his broker name. (See RSA 331-A:16, IV(a); Rea 404.05(b)).

³ Craigslist.org is a website that is free for posters and viewers of on-line classifieds.

- k. Only after an interested party would initiate contact with him through the posting, would the Respondent reveal that he was not the owner.
- l. Only at that time would he reveal that he was a broker; however, he would not necessarily explain that he was not the principal broker.
- m. At that time he would represent that Coleman Realty Group was his broker firm.
(See RSA 331-A:18, IV).
- n. Only at that time or later would he provide an IDX Link.
- o. If a transaction was consummated, the Respondent would demand "a co-broke" fee from the principal broker.

16. The Respondent admitted to having placed several of these postings prior to August 4, 2011.

17. On or about March 7, 2011, Investigator Flanagan left the Respondent a telephone message: "I called him and left a message that he can't post ads of other agents' listings except through a NNEREN link if he is a member, and I also said he can't post blind ads."

CF at 45.

18. On August 4, 2011, Investigator Flanagan telephoned the Respondent and spoke to him directly. Investigator Flanagan told the Respondent:

- a. That his method of posting ads through Craigslist was a violation of the Commission's practice act;
- b. That he could not list another licensee's advertisement as his own and/or without an IDX Link;
- c. That he did not have the listing;
- d. That he could not post blind ads;
- e. That he did not have the written permission of the property owner or agent;
- f. That he could not advertise another's property without the owner's written consent;
- g. That he was doing business under an expired broker license;
- h. That he had placed advertisements for property rentals without identifying himself as a real estate licensee or the name of his agency;

19. The Respondent purposely lied to Investigator Flanagan during the August 4, 2011 telephone conversation as follows (CF at 45):

- a. The Respondent told Investigator Flanagan that he did not place the advertisements on Craigslist.
- b. The Respondent told her that he did not know how the advertisements became to be placed on Craigslist.
- c. The Respondent told her that he suspected that one of his agents had done so in his name.
- d. The Respondent told her that he would make sure that it did not happen again.

20. The Respondent knowingly continued to violate the law. See CF at 50.

- a. The Respondent feels that the law is antiquated and that it is therefore not his duty to follow the law.
- b. In the alternative, the Respondent feels that due to the modern technology and availability of information portals, such as Craigslist, the Respondent need not adhere to the law.

21. The Respondent continued to upload postings he would find on the MLS in the same manner as described above. See CF at 50. The Respondent also admitted to having placed several of these postings after August 4, 2011. CF at 20-40.

22. On September 30, 2011, another licensee, Debbie MacKenzie, sent a complaint to the Commission. See CF at 19.

- a. MacKenzie had recently uploaded information on a property to the MLS. The property owner saw the posting on Craigslist, suspected that it was her own property, responded to the ad, learned that it was her own property that was not authorized for advertisement in this manner and complained to MacKenzie.
- b. MacKenzie attached about 15 of the Respondent's Craigslist postings that match the above method of operation. CF @ 20-40.

23. Investigator Flanagan initiated an investigation which required the Respondent to submit a response in writing.

24. The Respondent admitted that the complaint's attachments were all his Craigslist postings and that he had continued to post in the manner described above, despite his assurances to the investigator, until he received the notice of formal investigation.

25. The Respondent stated that his motivation in doing the above was to help people to find homes to live in and to help homeowners fill their empty homes with renters or buyers. The Respondent appeared not to understand the seriousness of his misconduct and assessed the appropriateness of his conduct with a 'no harm, no foul' approach.

Relevant Law:

331-A:1 Purpose. – It is the policy of this state to regulate the practice of real estate brokers and salespersons in order to ensure that they meet and maintain minimum standards which promote public understanding and confidence in the business of real estate brokerage.

331-A:16 Supervision of Real Estate Office; Branch Offices. –

I. Every real estate office or real estate branch office, whether operated as a corporation, partnership or sole proprietorship, shall be directed, supervised and managed by a licensed real estate broker. The principal broker shall submit to the commission a branch office application form prior to the opening of any branch office. The principal broker shall designate a managing broker for each branch office the principal broker opens. The principal broker shall notify the commission when any licensee associated with the principal broker transfers from one branch office to another branch office within the same association.

...

IV. (a) All advertisements by a broker or salesperson shall include the broker's or salesperson's legal name or reasonable derivative thereof and the regular business name of the firm or the principal broker's name when licensed under an individual principal broker license. The firm or principal broker's name, within the advertisement, shall be clearly identifiable. This requirement shall apply to all categories of advertising including all publications, radio or television broadcasts, all electronic media including electronic mail and the Internet, business stationery, business and legal forms and documents, and signs and billboards.

...

(c) With respect to limited electronic media, the requirements of subparagraphs (a) and (b) shall be satisfied if the limited electronic media includes a link to an Internet display that contains the required information.

331-A:18 Lapse of License. –

I. If a license is not renewed before the expiration date, then the license is deemed to have expired, and a licensee may renew an expired license up to 6 months after its expiration date by complying with the requirements of RSA 331-A:19 and by submitting the required late fee.

...

IV. The rights of the licensee under such expired or lapsed license shall be terminated. It shall be unlawful to act or attempt or offer to act in any matter as a real estate broker or salesperson under an expired or lapsed license.

331-A:26 Prohibited Conduct. – The following acts, conduct or practices are prohibited, and any licensee found guilty after a hearing shall be subject to disciplinary action as provided in RSA 331-A:28:

...

XXXI. Offering real estate for sale or lease without the knowledge and written consent of the owner or owner's authorized agent, or on terms other than those authorized by the owner or owner's authorized agent.

...

Rea 404.04 Brokerage Contracts.

(a) No broker or salesperson shall act on behalf of a seller or lessor with regard to negotiating the sale, purchase, exchange or lease of any real estate or of the improvements thereon, collect rents, or attempt to collect rents without a written contract signed by all parties.

...

Rea 404.05 Advertisements.

(a) A broker shall not advertise the sale, purchase, exchange, or lease of real property, other than the sale, exchange or lease of her or his own real property, in a manner indicating the offer to sell, purchase, exchange or lease is being made by a principal. Every such advertisement shall clearly indicate that it is an advertisement of a principal broker, pursuant to RSA 331-A:16, IV.

(b) A salesperson or broker shall not advertise the sale, purchase, exchange or lease of real property for another or others without including in the advertisement the name of the real estate brokerage firm with which he or she is associated, or the name of that licensee's principal broker, pursuant to RSA 331-A:16, IV.

Rulings of Law:

The Commission makes the following findings by a preponderance of the evidence:

1. The Respondent acted or attempted or offered to act in any matter as a real estate broker or salesperson under an expired or lapsed license in violation of RSA 331-A:18, IV, when, on numerous occasions, he held himself out as acting under the broker license of Coleman Realty Group after it expired on February 14, 2009. (Notice of Hearing, paragraph 5A)

2. The Respondent placed advertisements for property rentals and failed to identify his name as a real estate licensee or the name of his real estate agency, in violation of RSA 404.05 and RSA 331-A:16, IV(a), when he placed many Craigslist postings – both before and after being Investigator Flanagan informed him directly that this was in violation of the practice act – without any identifying

information as narrated above; namely the Respondent did not identify his name as a real estate licensee or the name of his real estate agency. (Notice of Hearing, paragraph 5B).

3. The Respondent listed property for rent without a written brokerage contract signed by all the parties in violation of RSA 404.04(a) when he placed the postings on Craigslist and did not include an IDX link and when he listed those properties without a written brokerage contract. (Notice of Hearing, paragraph 5C).

4. The Respondent listed property for rent without the knowledge and written consent of the property owner or the owner's authorized agency, in violation of RSA 331-A:26, XXXI as narrated above. (Notice of Hearing, paragraph 5D).

Disciplinary Action:

Based upon the Findings of Facts and Rulings of Law above, the Commission finds that the Respondent's actions indicate that he has failed to "meet and maintain the minimum standards which promote public understanding and confidence in the business of real estate brokerage" (RSA 331-A:1 Purpose) and has voted to order the following:

IT IS **ORDERED** that the Respondent's real estate license is **SUSPENDED** for six (6) months from the date of this order and shall not be reinstated until further order of this Commission. Within seven (7) days from the effective date of this order, the Respondent will surrender his real estate broker wall licenses and pocket ID card – and the wall licenses and pocket ID cards of all licensees under his supervision.

IT IS **FURTHER ORDERED** that the suspension shall remain in effect until further order of the Commission. Prior to any request to lift the restriction, the Respondent must meaningfully complete the following NHREC accredited courses:

- a. 40 (forty) hour pre-licensing course;
- b. 3 (three) hour ethics course;
- c. 3 (three) hour agency course;
- d. 3 (three) hour advertising course.

These courses are to be completed by classroom delivery method only. These hours shall be completed within one (1) year from the effective date of this order. Within fifteen (15) days of

completing these hours, the Respondent shall notify the Commission and provide proof of written completion.

IT IS FURTHER ORDERED that the Respondent's failure to comply with any terms or conditions imposed by this Final Decision and Order shall constitute unprofessional conduct pursuant to RSA 331-A:26, XXIX, and a separate and sufficient basis for further disciplinary action by the Commission against the Respondent.

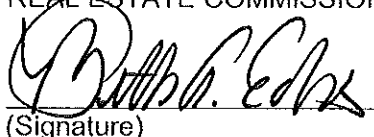
IT IS FURTHER ORDERED that this Final Decision and Order shall become a permanent part of the Respondent's disciplinary file, which is maintained by the Commission as a public document.

IT IS FURTHER ORDERED that if this decision is not appealed within thirty days of the effective date, it shall become final. See RSA 331-A:28, III ("The action of the commission in revoking, suspending, or denying a license or accreditation, or levying a fine, shall be subject to appeal to the superior court at the instance of the licensee or an accredited individual, institution, or organization, within 30 days after the filing of the commission's decision...").

IT IS FURTHER ORDERED that this Final Decision and Order shall take effect as an Order of the Commission on the date an authorized representative of the Commission signs it.

Date: June 19, 2012

*BY ORDER OF THE NEW HAMPSHIRE
REAL ESTATE COMMISSION


(Signature)

Beth Edes, Executive Director
Authorized Representative of the
New Hampshire Real Estate Commission

*\ Daniel S. Jones, Commission member, (case evaluator) recused.
James R. Therrien, Commission member, recused.